

**REMARKS**

This Response is submitted in response to the Office Action dated January 28, 2011. Claims 1-4, 6-7, 10-14, 19-20 and 35-47 are pending in the application. Claims 5, 8-9, 15-18 and 21-34 have been cancelled. Claims 42-47 are newly added. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

***Examiner Interview***

The Applicant thanks Examiner Stransky for the courtesies extended during the Examiner Interview of April 25, 2011. Applicant provides the following additional remarks for the Examiner's consideration.

***Claim Rejections – 35 U.S.C. § 102***

Claims 1 and 4 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Garay et al.* (U.S. Pat. No. 4,925,446). Applicant respectfully traverses.

Applicant has amended independent claim 1 to recite elements not disclosed, taught or suggested in *Garay*. In particular, Applicant has amended claim 1 to recite “a retractable tubing housed in said recessed region of said receiver and configured to be withdrawn from said recessed region of said receiver.”

Support for amended claim 1 is found throughout the originally filed disclosure, for example, in paragraphs [0025] and [0033] of the specification.

*Garay* fails to disclose, teach or suggest, at least one limitation recited in claim 1, including “a retractable tubing housed in said recessed region of said receiver and configured to be withdrawn from said recessed region of said receiver.” *Garay* discloses “an inflatable member 11, an inflation tube 12, and a plurality of beneficial agent-containing cartridges 13.” *See col. 3, lns. 60-62.* After the inflatable member 11 is implanted within the patient's stomach,

the “inflation tube and valve are allowed to pass into the stomach.” *See col. 5, lns. 16-17*. In one embodiment, the inflatable member 11 includes an opening 28 that “defines a cavity in which cartridges 13 reside.” *See col. 5, lns. 64-65*. However, the inflation tube 12 is not housed in the cavity, and the inflation tube 12 is accordingly not configured to be withdrawn from the cavity. *See col. 5, ln. 57 – col. 6, ln. 10; Fig. 5*. *Garay* does not disclose, teach or suggest a retractable tubing housed in a recessed region of a receiver of a gastric balloon, and configured to be withdrawn from a recessed region of a receiver of a gastric balloon. *Garay* accordingly fails to disclose, teach or suggest at least one limitation recited in claim 1, including “a retractable tubing housed in said recessed region of said receiver and configured to be withdrawn from said recessed region of said receiver.”

Thus, for at least the reasons stated above, Applicant respectfully requests that the rejection of independent claim 1 under 35 U.S.C. § 102(b) be withdrawn. Claim 1 is novel and patentably distinguishable over *Garay* and should be allowable.

Regarding dependent claim 4, it depends from and further limits independent claim 1, which is believed to be patentable, and thus this dependent claim should also be patentable over *Garay*, for at least the reasons stated above in regard to claim 1.

Hence, Applicant respectfully requests the rejection of claims 1 and 4 under 35 U.S.C. § 102(b) be withdrawn.

### ***Claim Rejections – 35 U.S.C. § 103***

To establish a prima facie case of obviousness, certain criteria must be met. One such criterion requires the prior art reference or references, when combined, to teach or suggest all the claim limitations. With the above requirements in mind, Applicant presents the following arguments.

**Claims 2-3 and 10-13**

Claims 2-3 and 10-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Garay* in view of *Mouri* (U.S. Patent No. 6,074,378). Applicant respectfully traverses.

Regarding dependent claims 2-3 and 10-13, they each depend from and further limit independent claim 1, which is believed to be patentable for the reasons discussed above. Applicant respectfully submits *Mouri* fails to remedy the deficiencies of *Garay* discussed above, including *Garay's* failure to disclose, teach or suggest “a retractable tubing housed in said recessed region of said receiver and configured to be withdrawn from said recessed region of said receiver.” *Mouri* is directed to a “self-retaining catheter.” *See col. 2, lns. 12-13.* However, *Mouri* fails to disclose, teach or suggest a retractable tubing housed in a recessed region of a receiver of a gastric balloon, and configured to be withdrawn from said recessed region of said receiver of said gastric balloon. Applicant therefore respectfully submits dependent claims 2-3 and 10-13 are novel, non-obvious, and patentable over *Garay* in view of *Mouri*, and should be allowable.

Applicant respectfully requests the rejection of claims 2-3 and 10-13 under 35 U.S.C. § 103(a) be withdrawn.

**Claims 6-7, 14 and 35-36**

Claims 6-7, 14 and 35-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Garay* in view of *Gau* (U.S. Patent No. 5,084,061). Applicant respectfully traverses.

Regarding dependent claims 6-7 and 14, they each depend from and further limit independent claim 1, which is believed to be patentable for the reasons discussed above. Applicant respectfully submits *Gau* fails to remedy the deficiencies of *Garay* discussed above, including *Garay's* failure to disclose, teach or suggest “a retractable tubing housed in said

recessed region of said receiver and configured to be withdrawn from said recessed region of said receiver.” *Gau* is directed to an “intra-gastric balloon having a self-sealing valve which is accessible to a filler tube.” *See col. 2, lns. 47-49*. However, *Gau* fails to disclose, teach or suggest a retractable tubing housed in a recessed region of a receiver of a gastric balloon, and configured to be withdrawn from said recessed region of said receiver of said gastric balloon. Applicant therefore respectfully submits dependent claims 6-7 and 14 are novel, non-obvious, and patentable over *Garay* in view of *Gau*, and should be allowable.

Independent claim 35 has been amended to recite elements not disclosed, taught or suggested in *Garay* or *Gau*, solely and in combination. In particular, Applicant has amended claim 35 to recite “a retractable tubing housed by said molded valve patch of said receiver and configured to be withdrawn from said molded valve patch of said receiver.”

Support for amended claim 35 is found throughout the originally filed disclosure, for example, in paragraphs [0025] and [0036] of the specification.

*Garay* fails to disclose, teach or suggest, at least one limitation recited in claim 35, including “a retractable tubing housed by said molded valve patch of said receiver and configured to be withdrawn from said molded valve patch of said receiver.” *Garay* does not disclose, teach or suggest use of a retractable tubing housed by a molded valve patch. *Garay* accordingly fails to disclose, teach or suggest at least one limitation recited in claim 35, including “a retractable tubing housed by said molded valve patch of said receiver and configured to be withdrawn from said molded valve patch of said receiver.”

*Gau* fails to remedy the deficiencies of *Garay*. *Gau* is directed to an “intra-gastric balloon having a self-sealing valve which is accessible to a filler tube.” *See col. 2, lns. 47-49*. However, a retractable tubing is not housed by a molded valve patch of *Gau*, which is configured to be

withdrawn from said molded valve patch. *Gau*, similarly as *Garay*, fails to disclose, teach or suggest at least one limitation recited in claim 35, including “a retractable tubing housed by said molded valve patch of said receiver and configured to be withdrawn from said molded valve patch of said receiver.”

Thus, for at least the reasons stated above, Applicant respectfully requests that the rejection of independent claim 35 under 35 U.S.C. § 103(a) be withdrawn. Claim 35 is novel, non-obvious, and patentably distinguishable over *Garay* in view of *Gau* and should be allowable.

Regarding dependent claim 36, it depends from and further limits independent claim 35, which is believed to be patentable, and thus this dependent claim should also be patentable over *Garay* in view of *Gau*, for at least the reasons stated above in regard to claim 35.

Hence, Applicant respectfully requests the rejection of claims 6-7, 14, and 35-36 under 35 U.S.C. § 103(a) be withdrawn.

#### **Claims 8-9 and 41**

Claims 8-9 and 41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Garay* in view of *Cheng* (U.S. Patent No. 4,693,695). Applicant respectfully traverses.

With regard to dependent claims 8-9, Applicant has cancelled these claims.

Applicant respectfully requests that the rejection of dependent claims 8-9 under 35 U.S.C. § 103(a) be withdrawn.

Independent claim 41 has been amended to recite elements not disclosed, taught or suggested in *Garay* or *Cheng*, solely and in combination. In particular, Applicant has amended claim 41 to recite “an interface on said small diameter portion of said shell to allow fluid to enter or exit said gastric balloon . . . a retractable tubing housed on said small diameter portion of said

receiver and having one end coupled to said interface, said retractable tubing configured to be withdrawn from said small diameter portion of said receiver . . . .”

Support for amended claim 41 is found throughout the originally filed disclosure, for example, in paragraphs [0025], [0027] and [0033] of the specification, and in Figure 3.

*Garay* fails to disclose, teach or suggest, at least one limitation recited in claim 41, including “an interface on said small diameter portion of said shell to allow fluid to enter or exit said gastric balloon . . . a retractable tubing housed on said small diameter portion of said receiver and having one end coupled to said interface, said retractable tubing configured to be withdrawn from said small diameter portion of said receiver . . . .” *Garay* does not disclose, teach or suggest use of a receiver that divides a gastric balloon shell into two hemispheres. *Garay* additionally fails to disclose, teach or suggest a retractable tubing housed on a small diameter portion of said receiver, with said small diameter portion having an interface. *Garay* therefore fails to disclose, teach or suggest at least one limitation recited in claim 41, including “an interface on said small diameter portion of said shell to allow fluid to enter or exit said gastric balloon . . . a retractable tubing housed on said small diameter portion of said receiver and having one end coupled to said interface, said retractable tubing configured to be withdrawn from said small diameter portion of said receiver . . . .”

*Cheng* fails to remedy the deficiencies of *Garay*. *Cheng* is directed to a toy, including “an air-buoyant envelope 12, and a tether 14 operatively connected to the envelope.” *See col. 3, lns. 35-38*. *Cheng* discloses the tether 14 may be a string or cord, or an elastic or elastomeric tether. *See col. 5, lns. 56-60*. However, *Cheng* does not disclose, teach, or suggest that the tether is a retractable tubing. Accordingly, *Cheng* does not contemplate that the connection point between *Cheng*’s tether 14 and envelope 12 comprises an interface for allowing fluid or air to

pass through to or from the envelope 12. Rather, the “inlets or filling nozzles” 34, 36 of *Cheng* are positioned at the ends of *Cheng*’s sealing discs 38, 40, as shown in Figure 4.

The invention claimed in claim 41, however, positions an interface 18 at the small diameter portion of the gastric balloon shell. *See Fig. 3*. The interface 18 at this position allows one end of the retractable tubing 16 to couple to the interface 18 to add or remove fluid from the gastric balloon. The remaining portion of the tubing 16 wraps around the small diameter portion of the shell. *Cheng* fails to disclose, teach or suggest this structure.

As such, *Cheng*, similarly as *Garay*, fails to disclose, teach or suggest at least one limitation recited in claim 41, including “an interface on said small diameter portion of said shell to allow fluid to enter or exit said gastric balloon . . . a retractable tubing housed on said small diameter portion of said receiver and having one end coupled to said interface, said retractable tubing configured to be withdrawn from said small diameter portion of said receiver . . . .”

Thus, for at least the reasons stated above, Applicant respectfully requests that the rejection of independent claim 41 under 35 U.S.C. § 103 be withdrawn. Claim 41 is novel, non-obvious and patentably distinguishable over *Garay* in view of *Cheng* and should be allowable.

#### **Claims 19 and 20**

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Garay* in view of *Adams* (U.S. Pub. No. 2002/0183765). Claim 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Garay* in view of *Trick* (U.S. Patent No. 4,417,567). Applicant respectfully traverses.

Regarding dependent claim 19, it depends from and further limits independent claim 1, which is believed to be patentable for the reasons discussed above. Applicant respectfully submits *Adams* fails to remedy the deficiencies of *Garay* discussed above, including *Garay*’s

failure to disclose, teach or suggest “a retractable tubing housed in said recessed region of said receiver and configured to be withdrawn from said recessed region of said receiver.” Applicant therefore respectfully submits dependent claim 19 is novel, non-obvious, and patentable over *Garay* in view of *Adams*, and should be allowable.

Regarding dependent claim 20, it depends from and further limits independent claim 1, which is believed to be patentable for the reasons discussed above. Applicant respectfully submits *Trick* fails to remedy the deficiencies of *Garay* discussed above, including *Garay*’s failure to disclose, teach or suggest “a retractable tubing housed in said recessed region of said receiver and configured to be withdrawn from said recessed region of said receiver.” Applicant therefore respectfully submits dependent claim 20 is novel, non-obvious, and patentable over *Garay* in view of *Trick*, and should be allowable.

Applicant respectfully requests the rejection of claims 19 and 20 under 35 U.S.C. § 103(a) be withdrawn.

**Claims 15-18 and 37-40**

Claims 15-18 and 37-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Garay* in view of *Duffy* (U.S. Pub. No. 2005/0171568). Applicant respectfully traverses.

With regard to dependent claims 15-18, Applicant has cancelled these claims.

Applicant respectfully requests that the rejection of dependent claims 15-18 under 35 U.S.C. § 103(a) be withdrawn.

Independent claim 37 has been amended to recite elements not disclosed, taught or suggested in *Garay* or *Duffy*, solely and in combination. In particular, Applicant has amended claim 37 to recite “a retractable tubing housed on said torsionally loaded axle of said receiver and configured to be withdrawn from said torsionally loaded axle.”



Support for amended claim 37 is found throughout the originally filed disclosure, for example, in paragraphs [0025] and [0035] of the specification.

*Garay* fails to disclose, teach or suggest, at least one limitation recited in claim 37, including “a retractable tubing housed on said torsionally loaded axle of said receiver and configured to be withdrawn from said torsionally loaded axle.” *Garay* does not disclose, teach or suggest use of a retractable tubing housed on a torsionally loaded axle of a receiver of a gastric balloon, said retractable tubing configured to be withdrawn from said torsionally loaded axle. *Garay* accordingly fails to disclose, teach or suggest at least one limitation recited in claim 37, including “a retractable tubing housed on said torsionally loaded axle of said receiver and configured to be withdrawn from said torsionally loaded axle.”

*Duffy* fails to remedy the deficiencies of *Garay*. *Duffy* is directed to an “assembly for guiding a catheter.” *See para. [0014]*. However, *Duffy* does not disclose, teach or suggest a retractable tubing housed on a torsionally loaded axle of a receiver of a gastric balloon, said retractable tubing configured to be withdrawn from said torsionally loaded axle.

*Duffy*, similarly as *Garay*, fails to disclose, teach or suggest at least one limitation recited in claim 37, including “a retractable tubing housed on said torsionally loaded axle of said receiver and configured to be withdrawn from said torsionally loaded axle.”

Thus, for at least the reasons stated above, Applicant respectfully requests that the rejection of independent claim 37 under 35 U.S.C. § 103(a) be withdrawn. Claim 37 is novel, non-obvious, and patentably distinguishable over *Garay* in view of *Duffy* and should be allowable.

Regarding dependent claims 38-40, they depend from and further limit independent claim 37, which is believed to be patentable, and thus these dependent claims should also be patentable over *Garay* in view of *Duffy*, for at least the reasons stated above in regard to claim 37.

Hence, Applicant respectfully requests the rejection of claims 37-40 under 35 U.S.C. § 103(a) be withdrawn.

Applicant has additionally added new claims 42-47. Applicant respectfully submits no new matter has been added, and that each added claim is patentable and in condition for allowance for at least the reasons provided above.

Support for the newly added claims can be found throughout the specification. For example, support for claim 42 can be found in paragraph [0036] and Figures 5 and 6. Support for claim 43 can be found, for example, in paragraph [0037]. Support for claim 44 can be found, for example, in paragraph [0036]. Support for claim 45 can be found, for example, in originally filed claim 15. Support for claim 46 can be found, for example, in originally filed claim 9. Support for claim 47 can be found, for example, in paragraph [0033] and Figure 3.

**CONCLUSION**

The application is deemed to be in condition for allowance and an expedited notice to this effect is respectfully requested.

If there are any questions with regards to this response, or if the Examiner believes that a telephone interview will help further prosecution of the application, the Examiner is invited to contact the undersigned at the listed telephone number.

Very truly yours,

**SNELL & WILMER L.L.P.**



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